

REGULATIONS GOVERNING THE LICENSING AND FUNCTIONING
OF SKILLED NURSING FACILITIES
AND
INTERMEDIATE CARE FACILITIES

OFFICIAL

CHAPTER 24

ENFORCEMENT

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payment of the full amount of the penalty would result in a permanent interruption in the provision of necessary services to residents even if paid in installments or delayed.

24.G. Other Sanctions for Failure to Comply with Applicable Laws/Regulations

24.G.1. Refusal to Renew. When an applicant fails to demonstrate consistent compliance with applicable laws and regulations, the Department may refuse to issue or renew a license to operate a nursing home.

24.G.2. — Conditional License. If, at the expiration of a full or provisional license, or during the term of a full license, the facility fails to comply with applicable laws and regulations, and, in the judgment of the Division, the best interest of the public would be served, the Division may issue a conditional license, or change a full license to a conditional license. Failure by the conditional licensee to meet the conditions specified by the Department shall permit the Division to void the conditional license or refuse to issue a full license. The conditional license shall be void when the Division has delivered in hand or by certified mail a written notice to the licensee, or, if the licensee cannot be reached for service in-hand or by certified mail, has left written notice thereof at the agency or facility. For the purposes of this subsection, the term "licensee" means the person, firm, corporation or association to whom a conditional license has been issued.

24.G.3. Emergency Suspension or Revocation. Whenever, upon investigation, conditions are found which, in the opinion of the Department, immediately endanger the health or safety of the persons living in or attending a facility, the Department may take action for an emergency suspension or temporary revocation of the license pursuant to either 5 M.R.S.A., Section 10004 or 4 M.R.S.A., Section 1153. If the Department acts pursuant to

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5 M.R.S.A., Section 10004, it shall give written notice of such emergency suspension by delivering notice in hand to the licensee. If the licensee cannot be reached for personal service, the notice may be left at the licensed premises. Whenever a license is suspended by the Department under this emergency provision, the Department shall file a complaint with the Administrative Court within thirty (30) days if the Department determines that a longer period of suspension or revocation is required.

24.G.4. — Revocation. Any license issued under these regulations may be suspended or revoked for violation of applicable laws and regulations, committing, permitting, aiding or abetting any illegal practices in the operation of the facility or conduct or practices detrimental to the welfare of persons living in or attending a facility. When the Division believes a license should be suspended or revoked, it shall file a complaint with the Administrative Court as provided in the Maine Administrative Procedures Act, Title V, Chapter 375.

24.G.5. Receivership. Pursuant to 22 M.R.S.A. Section 7931 et. seq., the Department may petition the Superior Court to appoint a receiver to operate a nursing home in the following circumstances:

1. When the facility intends to close but has not arranged at least thirty (30) days prior to closure for the orderly transfer of its residents;
2. When an emergency exists in the facility which threatens the health, security or welfare of residents; or
3. When the facility is in substantial or habitual violation of the standards of health, safety or resident care established under

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State or Federal regulations to the detriment
of the welfare of the residents.

24.G.6. Appeals. Any nursing home aggrieved by the Department's decision to take any of the following actions, or to impose any of the following sanctions, may request an administrative hearing to refute the basis of the Department's decision, as provided by the Maine Administrative Procedures Act, 5 M.R.S.A. Section 1001 et. seq. or the Department's Administrative Hearing Manual. Administrative hearings will be held in conformity with the Department's Administrative Hearing Manual. A request for a hearing must be made in writing to the Director of the Division of Licensing and Certification, and must specify the reason for the appeal. Any request must be mailed within ten (10) days from receipt of the Department's decision to:

- a. issue a conditional license;
- b. amend or modify a license;
- c. void a conditional license;
- d. refuse to issue or renew a full license;
- e. refuse to issue a provisional license;
- f. stop or limit admissions;
- g. issue a directed plan of correction;
- h. affirm or modify an assessment of penalties after an informal review;
- i. deny application to reduce the amount or delay the payment of any penalty.

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- 24.G.7. Public Information. The Department will maintain an up-to-date listing of all sanctioned facilities. Upon final action on the imposition of a sanction, the Department will add the sanctioned facility to its listing. This information will be available to the public.

When I am ill or injured, who makes decisions about my treatment?

You do, as long as you are over the age of 18 and of sound mind. Your doctor will give you information about your medical condition and about the different treatments which can help you. Every medical treatment has risks as well as benefits, and your doctor must tell you about them in words you can understand.

Your doctor may recommend a particular form of treatment. However, only you can make the final decision. You can say "yes" to the treatments you do want, and "no" to the treatments you do not want. You may decide that you do not want any treatment at all.

The choice you make will depend on your values and beliefs -- the things that are most important to you in your life.

Who will make decisions for me if I am too ill to decide?

Sometimes people are too ill to talk to their doctors about medical treatment. They may be unconscious, heavily medicated, or too confused to make decisions. If this happens to you, the doctor may ask your family to make decisions about your care. This may work well, but problems may arise. After all, families do not always agree. Also, your family may not know what you would want and may not make the same decisions that you would make

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if you were still capable of doing so. For this reason, it is a good idea to discuss your wishes with the people close to you.

You can go even further than this and state your wishes in writing in an advance directive.

What is an advance directive?

An advance directive is a piece of paper in which you say how decisions should be made about your health care if and when you are unable to make your own decisions.

There are two types of advance directives: the Living Will and the Durable Health Care Power of Attorney. Each of these forms accomplishes different things. It is important to understand what these forms do before signing either one.

What does a Living Will do?

When you sign a Living Will you give directions as to how far the doctors should go to prolong your life when you are dying or in a persistent vegetative state. A Living Will is for people who do not want to be kept alive on machines or by heroic measures (such as CPR, a ventilator, or artificial feeding) when there is no longer a realistic hope for recovery. Signing a Living Will does not mean that all treatment will be taken away. The doctors and nurses will still do everything possible to keep you comfortable and free of pain.

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What does a Durable Power of Attorney do?

A Durable Power of Attorney for Health Care does much more than a Living Will does. When you sign a Durable Power of Attorney, you name a trusted person (usually a friend or relative) to make any and all kinds of decisions about your health care when you are unable to do so. The person you name can make decisions about what should be done if you are dying, but can also make more "ordinary" decisions such as deciding on medication, consenting to surgery, and arranging for nursing home care or home health services. The form is called "durable" because it will still be in effect after you (the person signing it) become incapacitated. This is different from an ordinary power of attorney which is only good for a short time and is no longer in effect after you become incapacitated.

Do I have to fill out an advance directive in order to get medical care?

No, you don't have to fill out any of these forms if you don't want to. You will still receive services from your doctor and from the health care facility, regardless of whether you fill out these forms.

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Can anyone fill out these forms?

Anyone 18 years of age or older of sound mind can fill out one of these forms.

Can I write my own Living Will or Durable Power of Attorney for Health Care?

Yes. The attached forms are only suggested forms. You are not required to use these forms or any other forms used by the health care facility at which you are being treated. You can write your own form if you want, which may either be typed or in your own handwriting.

If I decide I want to fill out one of these forms, which form should I use?

If you feel strongly that you do not want extraordinary life support measures used when you are dying or in a persistent vegetative state, then you should fill out a Living Will.

If you want someone to be there to make decisions for you about all kinds of health care matters when you are unconscious or unable to speak for yourself, then you should fill out a Durable Power of Attorney for Health Care. If you are concerned about both of these situations, then you should fill out both the Living Will and the Durable Power of Attorney for Health Care.

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Can I change my mind after signing one of these forms?

You may revoke (cancel or take back) what you have said in a Living Will or Durable Power of Attorney at any time by simply telling your doctor, either in person or in writing. Your doctor will make your change of mind part of your medical record.

Also, the form you sign will not actually take effect until you are so ill that you are unable to make decisions or communicate with the doctor. This means that your doctor will continue to talk to you as long as you are still of sound mind. The doctor will only look to the Living Will or Durable Power of Attorney for directions when you are no longer able to express your wishes.

What if there is someone in my family whom I do not want to make decisions about my health care?

The law allows you to prevent certain individuals from making decisions about your care. You can do this either by adding a sentence to your Living Will or Durable Power of Attorney, or by making a statement in a separate piece of paper which must include your signature and the date.

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Whom should I talk to about advance directives?

It is a good idea to talk to your doctor and your family if you decide to fill out one of these forms. Your doctor and your family will want to hear from you in person as to how you feel about things. Your doctor can also answer questions about the forms in light of your own medical condition. You may also want to talk to your minister, priest or rabbi.

Where can I get answers to my questions?

If you have questions, feel free to call:

Bureau of Elder and Adult Services
Maine Department of Human Services
624-5335

Maine Committee on Aging
289-3658

Do I need a lawyer to fill out one of these forms?

No, you do not have to get a lawyer's help to fill out these forms. A lawyer may be helpful, however, if you have questions about the words used in the forms or if you want to add extra language to the form having to do with your own medical condition.

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